

## The complaint

Mr G complains that MBNA Limited (MBNA) won't refund money he says he lost in a scam.

## What happened

### *What Mr G says:*

Mr G says he was the victim of fraudulent activity on his account. He says someone called him and impersonated his bank. In October 2022, he reported a fraud to MBNA and the bank refunded 17 payments totalling £2,635.73, including transaction fees.

On 14 February 2023, there was a balance transfer of £1,236 from Mr G's credit card to another credit card account. Mr G says this was the same scam as before, and the money should be refunded.

Mr G's account was passed to a debt collection agency in September 2023 – the balance was £2,593.

### *What MBNA said:*

In March 2023, MBNA declined to refund the money. In November 2023, the bank said the balance was due to be paid, defaulted Mr G's account and passed it to a debt collection agency.

### *Our investigation so far:*

Our investigator didn't uphold Mr G's complaint. She said the payment of £1,236 wasn't high enough for MBNA to have intervened and question it.

Mr G didn't agree and asked that an ombudsman look at his complaint. **(continued)**

## What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

All banks have certain duties to protect customers from scams and fraud. Where there is evidence that there is a possible scam – then banks might step in and stop the payment in question. But – even if Mr G didn't intend for the money to go to a scammer, he is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider MBNA should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I need to decide whether MBNA acted fairly and reasonably in its dealings with Mr G when he made the payments, or whether it should have done more than it did. I have considered the position carefully.

I considered the amount of the payment in question. And here, there's a balance to be made: MBNA has certain duties to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. In this case, I think MBNA acted reasonably in processing the payment – it was too low a value for MBNA to be concerned or suspicious.

I am also not convinced that the payment in question was a scam or fraudulent payment, and therefore couldn't be considered for a refund. I say that as:

- The previous scam payments (refunded) were much earlier - in October 2022. Normally, a scam comprises of a series of payments over days or even hours.
- The previous scam payments were to overseas accounts, and in currency - whereas the payment in February 2023 was to a UK credit card.
- It would be very unusual for a scammer to make a balance transfer to a UK credit card. Normally, such fraudulent payments are made to other bank accounts in the UK or overseas.
- MBNA showed us the balance transfer process – it needs someone to go into Mr G's credit card account, add the destination credit card details (card number, expiry date, amount to be transferred), agree to the terms and conditions and confirm. MBNA told us this was done online in Mr G's case. I consider it would be very unusual for a scammer to go through that process.
- We asked Mr G more questions about what happened – how he was approached; what the payment was said to be for; how the payment was made; and why or how the payment was made by balance transfer to another credit card. Unfortunately, I'm not persuaded that Mr G gave sufficient evidence that persuades me this was a fraudulent payment.

And so, for these reasons, I am not upholding Mr G's complaint, and MBNA don't have to do anything here.

## **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 6 August 2024.

Martin Lord  
**Ombudsman**